



U.S. Department of Justice

Ronald C. Machen Jr.
United States Attorney

District of Columbia

*Judiciary Center
555 Fourth St., N.W.
Washington, D.C. 20530*

December 13, 2012

Chairwoman Deborah K. Nichols
D.C. Board of Elections
One Judiciary Square
441 4th Street, N.W.
Washington, D.C. 20001

Dear Chairwoman Nichols:

On June 10, 2011, the District of Columbia Office of Campaign Finance filed a complaint against the Committee to Re-Elect Kwame Brown before the District of Columbia Board of Elections and Ethics. That complaint alleged a litany of violations of the District's campaign finance laws by the principal committee organized to support Kwame Brown's re-election to the D.C. Council in 2008. Shortly after the filing of the complaint, the Committee to Re-Elect Kwame Brown moved to hold the administrative proceedings in abeyance pending the referral of the allegations in the complaint to the U.S. Attorney's Office. On July 8, 2011, the Board referred the allegations in the complaint to my Office for criminal investigation.

The U.S. Attorney's Office, working with the Federal Bureau of Investigation and the Internal Revenue Service-Criminal Investigation, conducted a comprehensive investigation of Kwame Brown's 2008 campaign, including the allegations recited in the administrative complaint. That investigation is now complete. As a result, on June 8, 2012, former D.C. Council Chair Kwame R. Brown pleaded guilty in the Superior Court for the District of Columbia to aiding and abetting unlawful cash expenditures by his campaign committee in violation of D.C. Code §§ 1-1102.03 and 1-1107.01(a). He was sentenced to 30 days in jail and 100 hours of community service with the prison sentence suspended on the condition that Brown successfully completes two years of probation. As part of his agreement to plead guilty, Brown was required to resign from his position as Chair of the D.C. Council. This conviction marks the first time that this 35-year-old campaign finance law has ever been criminally enforced.

During the course of our investigation, we also uncovered felony financial crimes committed by Kwame Brown and his brother, Che Brown. On June 8, 2012, Kwame Brown pleaded guilty in federal court to bank fraud in connection with false information he provided to Industrial Bank to obtain two personal loans. Today, Che Brown pleaded guilty in federal court to bank fraud in connection with false information he provided to GMAC Mortgage LLC to obtain a loan modification.

We do not plan to file additional criminal charges related to Kwame Brown's 2008 campaign. However, as you know, the resolution of the criminal investigation does not resolve the pending administrative complaint. At the time of its referral, the Board expressly noted that it retained jurisdiction to address the administrative complaint and assess appropriate civil penalties at a later time. Now that our criminal investigation is complete, the Board may take up the administrative complaint.

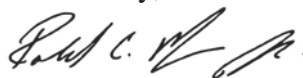
The closure of the criminal investigation without additional prosecutions should not be a factor in the Board's independent determination whether civil penalties are warranted. The criminal campaign finance provisions of the D.C. Code typically require proof beyond a reasonable doubt of knowledge by the defendant of the governing restrictions and the conduct in violation of those restrictions. Candidates often cannot be held accountable for misconduct by individuals working on their behalf. Individuals who work on behalf of a campaign but hold no official position may not be subject to certain provisions. Within this statutory context, the unavailability of criminal charges should in no way compel the conclusion that administrative action is inappropriate.

Similarly, the decision to close this matter without additional criminal charges should not be construed as a judgment on the factual findings underlying the administrative complaint. To the contrary, some findings of the Office of Campaign Finance were expressly confirmed by Kwame Brown through his guilty plea. Kwame Brown acknowledged that he authorized his brother, Che Brown, to serve as a signatory on the campaign's primary account. Kwame Brown also authorized his brother to open a campaign "side account." Furthermore, Kwame Brown authorized his brother to make cash withdrawals from the campaign's bank accounts, knowing that his brother would be making unlawful cash expenditures on behalf of the campaign.

Going forward, we encourage the Board to vigorously enforce provisions regarding cash donations, cash expenditures, and their financial disclosure. Because cash can be collected, transferred, and distributed without creating a financial record, it is often difficult to trace its source or destination. Unrestricted, undisclosed cash expenditures undermine the integrity of the campaign finance system by preventing regulators and the voting public from knowing how a candidate is spending money collected from private donors. Free-flowing, unreported campaign cash creates easy opportunities for abuse, vote-buying, misappropriation, or outright theft with no hope of meaningful oversight. We urge the Board to demand transparency by cracking down on cash expenditures that exceed statutory limits.

As you know, the investigative information we are permitted to share is limited by statute, rule, court order, ethical restrictions, and Department of Justice policy. Nevertheless, we stand ready to assist in whatever way we can as you take up consideration of the administrative complaint filed by the Office of Campaign Finance. Please do not hesitate to contact me personally if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald C. Machen Jr.", written in a cursive style.

Ronald C. Machen Jr.
United States Attorney